

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3

4 STERLING P. BEATTY,

5 Petitioner,

6 vs.

7 D. NEVENS, et al.,

8 Respondents.  
9

Case No. 2:13-cv-00764-JAD-PAL

**ORDER**

[22]

10 After a jury trial in state district court, petitioner was convicted of first-degree murder with  
11 the use of a deadly weapon, conspiracy to commit robbery, two counts of attempted robbery with the  
12 use of a deadly weapon, and attempted murder with the use of a deadly weapon. Ex. 51 (#25).  
13 Petitioner appealed, and the Nevada Supreme Court affirmed. Ex. 61 (#25). Petitioner then filed in  
14 state district court a post-conviction habeas corpus petition. Ex. 68 (#25). The state district court  
15 denied the petition. Ex. 82 (#30). Petitioner appealed, and the Nevada Supreme Court affirmed.  
16 Ex. 83 (#30). Petitioner then commenced this action. Respondents now move to dismiss grounds 1  
17 and 2 of the petition as legally barred.<sup>1</sup> For the reasons below, I agree, and I grant the motion to  
18 dismiss (#22).

19 **Discussion**

20 Grounds 1 and 2 are claims that petitioner's rights guaranteed by the Fourth Amendment  
21 were violated. In ground 1, petitioner alleges that a false statement was used knowingly to obtain an  
22 arrest warrant. In ground 2, petitioner alleges that a search of his residence incident to his arrest was  
23 illegal. Petitioner had full and fair opportunities to litigate these Fourth Amendment issues in state  
24 court; therefore, he cannot raise these issues in federal court. *Stone v. Powell*, 428 U.S. 465 (1976).  
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27 <sup>1</sup> Before the court are the petition for a writ of habeas corpus (#13), respondents' motion to  
28 dismiss (#22), petitioner's opposition (#32), and respondents' reply (#33).

1 Indeed, petitioner actually litigated the issue in ground 2 in state court. *See* Ex. 61, at 3-5 (#25). The  
2 court dismisses grounds 1 and 2.

3 The court will not address respondents' alternative argument that ground 1 is procedurally  
4 defaulted. Whether or not it is procedurally defaulted, and whether or not petitioner can show cause  
5 and prejudice for the default, the court still would need to dismiss the ground under *Stone v. Powell*.


6 In his opposition (#32), petitioner points the court to grounds 6 and 8 (claims of ineffective  
7 assistance of counsel) as part of his argument why grounds 1 and 2 should not be dismissed. A  
8 claim barred by the principles articulated in *Stone v. Powell* cannot be saved by a showing of good  
9 cause and prejudice. It does not matter that counsel did not raise a Fourth Amendment claim; what  
10 matters is that petitioner had the opportunity to raise it. On the other hand, a claim of ineffective  
11 assistance of counsel for failure to raise a Fourth Amendment claim is legally distinct from the  
12 underlying Fourth Amendment claim, and it is not subject to dismissal under *Stone v. Powell*. *See*  
13 *Kimmelman v. Morrison*, 477 U.S. 365, 374 (1986). Respondents will need to address the merits of  
14 grounds 6 and 8 in their answer, as even they acknowledge in their reply (#33).

### 15 Conclusion

16 IT IS THEREFORE ORDERED that respondents' motion to dismiss (#22) is **GRANTED**.  
17 **Grounds 1 and 2 of the petition (#13) are DISMISSED** from this action.

18 IT IS FURTHER ORDERED that respondents have 45 days from the date of entry of this  
19 order to file and serve an answer that complies with Rule 5 of the Rules Governing Section 2254  
20 Cases in the United States District Courts. Petitioner will then have 45 days from the date on which  
21 the answer is served to file a reply.

22 February 20, 2015

23   
24 JENNIFER A. DORSEY  
United States District Judge  
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